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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 23 2005
EAC 03 173 53807

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a project coordinator for EarthData Holdings. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Several witness letters accompany the initial filing of the petition. Most of the witnesses first met the petitioner when he was an undergraduate student at Wuhan Technical University or a graduate student at the University of Melbourne. The letters contain similar descriptions of the petitioner's work. As a representative example, we cite the letter from Professor Clive S. Fraser of the University of Melbourne, who states:

> I have the privilege of being regarded as one of the foremost research scientists and practitioners in the world in the specialized area of digital photogrammetry, and specifically close-range vision metrology. Basically, this field deals with the mathematical reconstruction of three-dimensional objects through vision-based techniques. . . . It was on a trip to universities in China in 1992 that I first heard of [the petitioner's] abilities, though ironically I was not to meet him in person until he arrived in Australia to study for a Ph.D. under my supervision some three years later. . . .
>
> I believe he'll be a tremendous asset not just to his current employer, Earthdata Holdings, but also to the photogrammetric engineering community in North America. He is an outstanding researcher with both an impressive international record and even more impressive potential for current and foreseeable future contributions to our field. . . .
>
> [The petitioner's] research work has concentrated on automated real-time vision metrology. This topic concerns the mathematical reconstruction of real-world objects using digital imaging technology and the science of photogrammetry. . . .

> During his Ph.D. research, [the petitioner] developed a multi-sensor Vision Metrology System (VMS) for the determination of surface contours of featureless and targetless objects, such as vehicle surfaces and human body surfaces. . . . The experiments conducted in this research demonstrate the new approach has practically provided fully automated, near real-time 3D surface contour extraction, which is important to a variety of industries. For example, [the petitioner's] research, which enables rapid 3D prototyping, will significantly reduce the turnaround time of dimensional quality control in automobile assembly. . . .
>
> [The petitioner's] recent work on four-dimensional human body and human face recording was aimed at achieving object model reconstruction and manipulation in real-time for various biomedical and biomechanics applications. A Real-Time 3D system [the petitioner] established at Glasgow University . . . enables near real-time range data generation and photo realistic 3D extraction. The system's performance, in combination with its spatial accuracy, is currently state-of-the-art.
>
> The capabilities of the system developed by [the petitioner] . . . can serve as the basis for passive navigation sensors in vehicles, real-time 3D TV production techniques that involve recognition, and the tracking of non-rigid objects such as the human face and human body.

Regarding the petitioner's current work at EarthData, Prof. Fraser states:

> EarthData collects information about the earth's surface. . . . [The petitioner's] research concentrates on the development of fast image matching algorithms for digital photogrammetric systems, and data post-processing software to transform that information into customized mapping and GIS [Geographic Information Systems] products and services. These services support a wide variety of land-use and natural resource management decisions by national, state, and local government agencies, as well as industries, such as utilities, telecommunications, forestry, mining, and engineering.

We note that much of counsel's introductory description of the petitioner's work is taken essentially verbatim from Prof. Fraser's letter. The petitioner submits copies of his scholarly writings (published articles and conference presentations), but no evidence to show the extent to which other researchers have cited the petitioner's work. The petitioner's *curriculum vitae* does not indicate that he has produced any published work since he began working for EarthData Holdings, and the record contains nothing from EarthData Holdings itself, and therefore the record contains no actual evidence regarding the petitioner's latest work.

The director denied the petition, stating that the petitioner has not shown frequent citation of his published work, nor has the petitioner otherwise demonstrated significant impact on his field of endeavor that would justify projections of future national benefit. On appeal, counsel argues that the petitioner's international reputation is evident from awards that the petitioner has received at various international conferences. These awards indicate that the petitioner's work compared favorably to other presentations or posters at those particular conferences, but they do not demonstrate the lasting impact of that work. We note that awards of

this kind can represent part, but not all, of a claim of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii). Exceptional ability, in turn, is not sufficient grounds for a waiver; by law, aliens of exceptional ability must generally have an offer of employment. Therefore, it necessarily follows that awards and comparable evidence of exceptional ability are generally not strong evidence in favor of granting a waiver. While there may be exceptions in specific instances, the petitioner has not shown that the awards he has received at professional gatherings are substantively different from countless other awards presented at many other comparable conferences that take place in any given year.

Regarding the citation of the petitioner's work, counsel states: "[The petitioner's] work has been cited frequently by colleagues worldwide. Two example papers presented at leading conferences are collected in Exhibit 24 and 25. It is not feasible to present a complete and accurate list of all the citations given the number of papers that are published on [a] daily basis worldwide." Thus, the petitioner has documented only two citations of his work. Counsel's vague contention that more citations exist but cannot be counted is not evidence of wider citation of the petitioner's work, and the claim that a complete of citations is unobtainable would not prevent the petitioner from documenting every citation of which the petitioner is currently aware. Counsel's vague claims do not in any way compel the presumption that the petitioner's work has been cited more than two times. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

One of the two citing articles in the record was co-authored by a professor at the University of Melbourne, and it cites work that the petitioner performed at that same university. Thus, the petitioner has documented one citation of his work outside of universities where he has studied, and counsel has refused to state, let alone document, how many additional citations exist. The record offers no basis for us to conclude that there are any more citations.

The petitioner submits additional articles about 3D imaging technology, and counsel asserts that these articles discuss or show instances of applications of the petitioner's work. One article, from *Sensor Review*, was written by researchers at the University of Glasgow, while the petitioner was a postdoctoral researcher there. The article discusses efforts by several different research groups, and indicates that "[w]ork is currently progressing . . . to construct a whole body all-round 3D imager." The petitioner's name is mentioned in conjunction with this particular project, but there is no indication that this work is any more significant than the other projects discussed at greater length in the article.

The petitioner submits a copy of an award-winning paper by other researchers. The petitioner's name is one of several that appear in the "Acknowledgments" section, although there is no description of the nature of the petitioner's contribution to the project. Given that the petitioner is not an author of the paper, and the 19 cited references do not include any of the petitioner's work, we see no reason to conclude that the paper is based to any significant extent on the petitioner's work.

Counsel asserts that the petitioner is irreplaceable in his current research, but counsel cites no support for this claim. The record contains no statements from any officials of EarthData Holdings to describe the nature or importance of the petitioner's work. As the director has already observed, the bulk of the record regards the

petitioner's student and postdoctoral work, with only minimal information about the petitioner's subsequent endeavors.

In summary, while the record demonstrates that the petitioner has been active in research related to three-dimensional moving images, the record shows that many others are likewise engaged. The evidence, and counsel's arguments, do not persuade us that the petitioner's work in this area has been especially significant or influential when compared with the efforts of other competent researchers. We do not contest the petitioner's skill or dedication to his work, but the petitioner has not demonstrated that he qualifies for the special added immigration benefit of a national interest waiver, over and above the classification for which his profession and advanced degree qualify him.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.